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7 Attorneys for Defendant
MORGAN STANLEY SMITH BARNEY LLC

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 DAWN WATTERS an individual, on
12 behalf of herself and on behalf of all
13 persons similarly situated,

14 Plaintiff,

15 v.

16 MORGAN STANLEY SMITH
17 BARNEY LLC, a Limited Liability
Company; and DOES 1 through 50,
inclusive,

18 Defendants.
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Case No. 3:22-cv-2912

[Sonoma County Superior Court Case
No. SCV-270269]

**DEFENDANT MORGAN
STANLEY SMITH BARNEY
LLC'S NOTICE OF REMOVAL**

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER**
3 **ATTORNEYS OF RECORD:**

4 PLEASE TAKE NOTICE that Defendant Morgan Stanley Smith Barney
5 LLC (“MSSB”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1332(d) (the
6 Class Action Fairness Act), and 1446(b) to effect removal of the above-captioned
7 action, which was commenced in the Superior Court of the State of California for
8 the County of Sonoma. The removal is proper for the reasons stated below.

9 **I. BACKGROUND**

10 1. On February 24, 2022, Plaintiff Dawn Watters, individually and
11 purportedly on behalf of all others similarly situated, filed a Complaint in the
12 Superior Court of California for the County of Sonoma, entitled *Dawn Watters v.*
13 *Morgan Stanley Smith Barney LLC*, Case No. SCV-270269. The allegations in the
14 Complaint are incorporated by reference in this Notice of Removal without
15 admitting any of them.

16 2. Plaintiff brings various wage-and-hour claims stemming from her
17 employment with MSSB. The Complaint asserts causes of action on a putative
18 class basis for: (1) unfair competition in violation of the California Business &
19 Professions Code section 17200 *et seq.*; (2) failure to pay minimum wages in
20 violation of Labor Code sections 1194, 1197, and 1197.1; (3) failure to pay
21 overtime wages in violation of Labor Code section 510; (4) failure to provide
22 required meal periods in violation of California Labor Code sections 226.7 and 512
23 and the applicable IWC Wage Order; (5) failure to provide required rest breaks in
24 violation of California Labor Code sections 226.7 and 512 and the applicable IWC
25 Wage Order; (6) failure to provide accurate itemized wage statements in violation
26 of Labor Code section 226; (7) failure to reimburse employees for necessary
27 business expenses in violation of Labor Code section 2802; and (8) failure to pay
28 wages when due in violation of Labor Code sections 201, 202, and 203.

1 3. Plaintiff brings these claims on behalf of herself and all individuals
2 who are or previously were employed by MSSB in California and classified as non-
3 exempt from February 24, 2018 through a date the Court determines. (Compl. ¶ 4.)

4 4. Plaintiff alleges that she and the putative class members were required
5 to work off-the-clock during their unpaid meal periods, were not paid for time spent
6 undergoing mandatory drug testing, and were not paid for time spent undergoing
7 any other testing and/or examination required as a condition of employment.
8 (Compl. ¶ 8.) Plaintiff further alleges that MSSB has a company policy and
9 procedure of rounding the time that Plaintiff and the putative class members
10 worked and recorded, and that this rounding was “always” to MSSB’s benefit.
11 (Compl. ¶ 8.) Plaintiff claims that as a result of these practices, she and the putative
12 class members are owed minimum and overtime wages.

13 5. Plaintiff alleges that MSSB failed to include non-discretionary
14 incentive payments that she and the putative class members received when it
15 calculated the regular rate of pay for the purposes of paying overtime wages, paid
16 sick leave, meal break premiums, and rest break premiums. (Compl. ¶¶ 10, 17-20.)

17 6. Plaintiff alleges that she and the putative class members were not
18 provided legally compliant meal breaks before the end of their first five hours of
19 work, nor were they provided legally compliant second meal breaks before the end
20 of their tenth hour of work on days where they worked more than ten hours.
21 (Compl. ¶ 11.) Plaintiff further alleges MSSB had a practice of rounding meal
22 period times to avoid paying meal break penalties to her and the putative class
23 members. (Compl. ¶ 11.)

24 7. Plaintiff alleges she and the putative class members were not provided
25 legally compliant rest periods at the required intervals and were not paid rest break
26 premiums for these noncompliant rest periods. (Compl. ¶ 12.) Plaintiff further
27 alleges that she and the putative class never received compliant rest breaks because
28 MSSB prohibited them from leaving the work premises during their rest periods.

(Compl. ¶ 12.)

8. Plaintiff claims that, because of the foregoing wage and hour violations, she and the putative class did not receive accurate wage statements as required under Labor Code section 226. (Compl. ¶ 14.) Plaintiff further contends that all wage statements that MSSB issued to her and the putative class members violated Section 226 because they did not show all of the information as required in Section 226(a); specifically, the wage statements did not include the hourly rate and total hours worked for the “Salary Non-Exempt” and “Regular Retro” wage payments. (Compl. ¶ 14.)

9. Plaintiff alleges that MSBB, as a pattern and practice, regularly failed to pay Plaintiff and the putative class members all wages due at the time of their termination, and therefore each separated putative class member is owed waiting time penalties equaling 30 days of wages under Labor Code section 203. (Compl. ¶¶ 20, 107-14.)

10. Plaintiff alleges that MSBB made unlawful deductions from her wages and from the putative class members’ wages. (Compl. ¶ 21.)

11. Plaintiff alleges she and the putative class members were not reimbursed for all necessary business expenses, including the costs associated with the use of their personal cell phones and personal home offices. (Compl. ¶¶ 22-23.)

II. REMOVAL IS TIMELY

12. On April 15, 2022, MSSB was served a copy of the Summons and Complaint.

13. This Notice of Removal is timely under any removal time period. *See* 28 U.S.C. § 1446(b); *SteppeChange LLC v. VEON Ltd.*, 354 F. Supp. 3d, 1041 (N.D. Cal. 2018) (Formal service of process, measured from the service date according to state law, is a prerequisite for triggering the 30-day removal period).

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1 **III. JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

2 14. The Court has original jurisdiction under the Class Action Fairness Act
3 of 2005, codified in 28 U.S.C. § 1332(d). As set forth below, this action is
4 removable pursuant to 28 U.S.C. § 1441(a) because it is a class action in which at
5 least one class member is a citizen of a state different from that of any one
6 defendant, the proposed class exceeds 100 members, and the amount in controversy
7 exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).

8 **A. Minimal Diversity is Satisfied**

9 15. CAFA's diversity requirement is satisfied here because at least one
10 plaintiff is a citizen of a state in which none of the defendants are citizens. *See* 28
11 U.S.C. § 1332(d)(2)(A) (requiring only "minimal diversity" under which "any
12 member of a class of plaintiffs is a citizen of a State different from any defendant").

13 16. MSSB's Citizenship. MSSB is now, and has been since the
14 commencement of this action, a limited liability company consisting of one
15 member, Morgan Stanley Domestic Holdings, Inc., which is a Delaware
16 corporation with its principal place of business in New York. For diversity
17 purposes, the citizenship of an LLC is determined by examining the citizenship of
18 each member of the company. *Johnson v. Columbia Properties Anchorage, LP*,
19 437 F.3d 894, 899 (9th Cir. 2006). Thus, MSSB is a citizen of New York and
20 Delaware.

21 17. Plaintiff's and the Putative Class's Citizenship. Plaintiff alleges she
22 was employed by MSSB in the State of California from 1991 to July 2021.
23 (Compl. ¶ 3.) MSSB's corporate records reflect that throughout Plaintiff's
24 employment at MSSB or its predecessor, her home address for payroll purposes
25 was in the State of California. (Burns Decl. ¶ 3.) MSSB's human capital
26 management software, Workday, shows that effective July 31, 2021, Plaintiff's
27 address was in the State of Idaho. (Burns Decl. ¶ 3.) For diversity purposes, an
28 individual is a citizen of the state in which he is domiciled. *Boon v. Allstate Ins.*

1 Co., 229 F. Supp. 2d 1016, 1019 (C.D. Cal. Oct. 3, 2002) (citing *Kanter v. Warner-*
 2 *Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). Domicile is determined by an
 3 individual's residence and intent to remain indefinitely. *Boon*, 229 F. Supp. 2d at
 4 1019. Place of employment is an important factor weighing in favor of citizenship.
 5 See, e.g., *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). Thus, MSSB is informed
 6 and believes, and on that basis alleges, that Plaintiff is now, and has been since the
 7 commencement of this action, either a citizen of the State of California or a citizen
 8 of the State of Idaho. MSSB is further informed and believes, and on that basis
 9 alleges, that the putative class—defined as current and former non-exempt
 10 employees in the State of California—is primarily comprised of citizens of the State
 11 of California. See *Ehrman v. Cox Comms., Inc.*, 932 F.3d 1223, 1227 (9th Cir.
 12 2019) (holding that, when removing a case pursuant to CAFA, a defendant's
 13 allegations of citizenship may be based solely on information and belief and need
 14 not contain evidentiary submissions).

15 18. Doe Defendants' Citizenship. The citizenship of fictitious defendants
 16 is disregarded for purposes of establishing removal jurisdiction under 28 U.S.C. §
 17 1332. See 28 U.S.C. § 1441(b)(1) ("... citizenship of defendants sued under
 18 fictitious names shall be disregarded").

19 **B. The Putative Class Exceeds 100 Members**

20 19. CAFA's requirement that proposed class members be no less than 100
 21 is satisfied here. See 28 U.S.C. § 1332(d)(5)(B).

22 20. Plaintiff defines the putative class as herself and all individuals who
 23 are or previously were employed by MSSB in California and classified as non-
 24 exempt for the period beginning on February 24, 2018 through a date the Court
 25 determines. (Compl. ¶ 4.)

26 21. MSSB's records show there are at least 2,776 individuals who are or
 27 were employed by MSSB in California and classified as non-exempt for the period
 28 beginning on February 24, 2018 through May 11, 2022. (Burns Decl. ¶ 4.)

1 **C. The Amount in Controversy Exceeds \$5 Million**

2 22. The amount in controversy in this proposed class action exceeds, in the
3 aggregate, \$5,000,000, exclusive of interest and costs. The Complaint does not
4 state the amount on controversy, and Plaintiff's vague and conclusory allegation
5 that the amount in controversy does not exceed \$5,000,000 must be ignored. *See,*
6 *e.g., Arias v. Residence Inn by Marriott*, 936 F.3d 920, 928-29 (9th Cir. 2019)
7 (vacating a remand order and recognizing that courts must ignore pre-class
8 certification stipulations when assessing the amount in controversy under CAFA)
9 (citing *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588 (2013) (holding that a
10 plaintiff's stipulation in a proposed class action complaint that the amounts at issue
11 do not exceed \$5,000,000 in order to fall below the federal jurisdictional
12 requirement must be ignored because a plaintiff cannot bind an absent class)).

13 23. MSSB denies Plaintiff's claims in their entirety and denies that they
14 are amenable to class treatment, but provides the following analysis of potential
15 damages (without admitting liability) based solely on the allegations in the
16 Complaint in order to demonstrate that the Complaint puts a sufficient amount "in
17 controversy" to warrant removal under 28 U.S.C. § 1332(d). MSSB relies on a
18 conservative estimate of the amount in controversy based only on damages sought
19 by Plaintiff for two of eight causes of action: the alleged rest break violations and
20 waiting time penalties.

21 24. Unpaid Rest Break Premiums. In her Fifth cause of action, Plaintiff
22 alleges that MSSB maintains an unlawful policy that prohibits employees from
23 leaving the work premises during rest breaks. (Compl. ¶ 12.) Because of this
24 alleged unlawful policy, allegedly none of the rest breaks that MSSB provided to
25 Plaintiff and the putative class members complied with California law. From
26 February 24, 2018 through May 11, 2022, non-exempt employees typically worked
27 full time schedules consisting of approximately 8 hours per day, 5 days a week, for
28 approximately 231,426 workweeks. (Burns Decl. ¶ 4.) As such, the amount in

1 controversy for Plaintiff's rest break claim is at least **\$14,534,660**:

2 a. 2018: \$2,923,360 (\$11 x 5 x 53,152)

3 b. 2019: \$3,885,180 (\$12 x 5 x 64,753)

4 c. 2020: \$3,578,510 (\$13 x 5 x 55,054)

5 d. 2021: \$3,323,810 (\$14 x 5 x 47,483)

6 e. 2022: \$823,800 (\$15 x 5 x 10,984)

7 25. Untimely Final Wages. In her Eighth cause of action, Plaintiff alleges
8 that MSSB had a "pattern or practice" of not paying all wages due at termination
9 and seeks 30 days of wages as waiting time penalties pursuant to Labor Code
10 section 203. (Compl. ¶¶ 20, 114.) As of May 11, 2022, at least 728 putative class
11 members have terminated their employment since February 24, 2018.

12 Conservatively using the applicable minimum wage in effect at the time of each
13 employee's termination, the amount in controversy for Plaintiff's waiting time
14 penalties claim is at least **\$2,211,360**:

15 a. 2018: \$477,840 (\$11 x 8 x 30 x 181)

16 b. 2019: \$512,640 (\$12 x 8 x 30 x 178)

17 c. 2020: \$418,080 (\$13 x 8 x 30 x 134)

18 d. 2021: \$604,800 (\$14 x 8 x 30 x 180)

19 e. 2022: \$198,000 (\$15 x 8 x 30 x 55)

20 (Burns Decl. ¶ 5.)

21 26. Attorneys' Fees. Attorneys' fees must be included in determining
22 whether the amount in controversy is satisfied, which in the Ninth Circuit typically
23 is 25% of any judgment in favor of the plaintiff. *See, e.g., Altamirano v. Shaw*
24 *Industries, Inc.*, 2013 WL 2950600, at *13 (N.D. Cal., June 14, 2013) (for CAFA
25 amount in controversy, adding 25% of the amount in controversy on the claims for
26 relief to account for attorneys' fees). Here, including potential attorneys' fees
27 would increase the amount in controversy by **\$4,186,505** (\$16,746,020 amount in
28 controversy x .25).

1 27. Total Amount in Controversy. Based on the above conservative
2 calculations, the amount in controversy for just Plaintiff's final pay claim and rest
3 break claim as alleged is **\$20,932,525**.

4 **IV. VENUE IS PROPER**

5 28. Venue lies in the Northern District of California pursuant to 28 U.S.C.
6 §§ 1441(a), 1446(a), and 84(c)(2). This action was originally brought in the
7 Superior Court of the State of California, County of Sonoma, which is embraced by
8 the Northern District of California.

9 **V. NOTICE OF REMOVAL**

10 29. In compliance with 28 U.S.C. § 1446(a), attached hereto as exhibits
11 are copies of the following papers filed in the Sonoma County Superior Court:

- 12 a. **Exhibit A:** Summons and Complaint;
13 b. **Exhibit B:** Defendant's Answer; and
14 c. **Exhibit C:** Plaintiff's Request for Dismissal of Class Action Without
15 Prejudice, the Declaration of Charlotte James in Support of Plaintiff's
16 Request for Dismissal of Class Action Without Prejudice, and
17 Plaintiff's [Proposed] Order Granting Plaintiff's Request for Dismissal
18 of Class Action Without Prejudice.

19 30. This Notice of Removal shall be served promptly on Plaintiff's
20 Counsel of Record and filed with the Clerk of the Superior Court of the State of
21 California in and for the County of Sonoma.

22 Dated: May 16, 2022

ANDREW R. LIVINGSTON
RACHEL CAPLER
Orrick, Herrington & Sutcliffe LLP


24
25 By: 
26 ANDREW R. LIVINGSTON
27 Attorneys for Defendant
MORGAN STANLEY SMITH
28 BARNEY LLC

EXHIBIT A

SUM-100

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

MORGAN STANLEY SMITH BARNEY LLC, a Limited Liability Company; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DAWN WATTERS, an individual, on behalf of herself and on behalf of all persons similarly situated,

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
2/24/2022 10:16 AM
Arlene D. Junior, Clerk of the Court
By: Melisa Kennedy, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA
Hall of Justice

600 Administration Drive, Room 107J, Santa Rosa, CA 95403

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman B. Blumenthal (Bar # 68687)

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, CA 92037

DATE: 2/24/2022 10:16 AM

(Fecha)

ARLENE D. JUNIOR

Clerk, by

(Secretario)

Melisa Kennedy

Deputy

(Adjunto)

CASE NUMBER:

(Número del Caso):

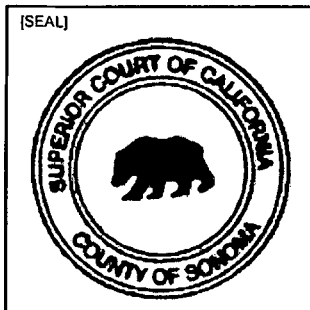
SCV-270269

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Melisa Kennedy

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): MORGAN STANLEY SMITH BARNEY LLC

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

ELECTRONICALLY FILED

Superior Court of California

County of Sonoma

2/24/2022 10:16 AM

Arlene D. Junior, Clerk of the Court

By: Melisa Kennedy, Deputy Clerk

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

DAWN WATTERS, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

MORGAN STANLEY SMITH BARNEY
LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. SCV-270269

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Dawn Watters ("PLAINTIFF"), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Morgan Stanley Smith Barney LLC ("DEFENDANT") is a limited
7 liability company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT is a brokerage firm and investment advisor.

10 3. PLAINTIFF was employed by DEFENDANT in California from 1991 to July of
11 2021 and was at all times classified by DEFENDANT as a non-exempt employee entitled to
12 the legally required meal and rest periods and payment of minimum and overtime wages due
13 for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
17 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
18 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

21 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
23 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which
24 failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged
25 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
26 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
27 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
28 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and

1 the other members of the CALIFORNIA CLASS who have been economically injured by
2 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
3 equitable relief.

4 6. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged.

13 7. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
18 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
20 Defendants' agents, servants and/or employees.

21 THE CONDUCT

22
23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they are
28 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to

1 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
2 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
3 should be PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA CLASS
4 Members also worked off the clock with respect to time spent undergoing mandatory drug
5 testing or any other testing and/or examination required as a condition of employment.
6 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
7 practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA
8 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their
9 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
10 have been paid had they been paid for actual recorded time rather than "rounded" time. As a
11 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage,
12 overtime wage compensation, and off-duty meal breaks by working without their time being
13 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
14 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
15 worked, is evidenced by DEFENDANT's business records.

16 9. State and federal law provides that employees must be paid overtime and meal and
17 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and
18 other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that
19 is tied to specific elements of an employee's performance.

20 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
21 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
22 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
23 performance for DEFENDANT. The non-discretionary incentive program provided all
24 employees paid on an hourly basis with incentive compensation when the employees met the
25 various performance goals set by DEFENDANT. However, when calculating the regular rate
26 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and other
27 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
28 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and

1 meal and rest break premium pay. Management and supervisors described the incentive
2 program to potential and new employees as part of the compensation package. As a matter of
3 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
4 Members must be included in the “regular rate of pay.” The failure to do so has resulted in a
5 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and
6 other CALIFORNIA CLASS Members by DEFENDANT.

7 11. As a result of their rigorous work schedules, PLAINTIFF and other
8 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
9 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
10 other CALIFORNIA CLASS Members were required from time to time to perform work as
11 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
12 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
13 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
14 which these employees were required by DEFENDANT to work ten (10) hours of work.
15 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
16 penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
17 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
18 compensation and in accordance with DEFENDANT’s corporate policy and practice.

19 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
20 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
21 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
22 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
23 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
24 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
25 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
26 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
27 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
28 Order requires employers to provide employees with off-duty rest periods, which the California

1 Supreme Court defined as time during which an employee is relieved from all work related
2 duties and free from employer control. In so doing, the Court held that the requirement under
3 California law that employers authorize and permit all employees to take rest period means that
4 employers must relieve employees of all duties and relinquish control over how employees
5 spend their time which includes control over the locations where employees may take their rest
6 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
7 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
8 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
9 DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members
10 cannot leave the work premises during their rest period.

11 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
12 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
13 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
14 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members
15 for all time worked, meaning the time during which an employee was subject to the control of
16 an employer, including all the time the employee was permitted or suffered to permit this work.
17 DEFENDANT required these employees to work off the clock without paying them for all the
18 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
19 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
20 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
21 Members forfeited time worked by working without their time being accurately recorded and
22 without compensation at the applicable minimum wage and overtime wage rates. To the extent
23 that the time worked off the clock does not qualify for overtime premium payment,
24 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of
25 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

26 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other members of the CALIFORNIA CLASS with complete and accurate wage statements
28 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.

Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. DEFENDANT failed to list the hourly rate and total hours worked for the “Salary Non-Exempt” and “Regular Retro” wage payments in violation of Cal. Lab. Code 226(a)(9). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210 provides:

[I]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

16. DEFENDANT from time to time failed to pay PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Retro Pay” regular wage payments.

17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates of pay.

1 18. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime
3 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
4 of employment.

5 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
6 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
7 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
8 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
9 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
10 Section 246.

11 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
12 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
13 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
14 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
15 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has
16 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

17 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
18 to collect or receive from an employee any part of wages theretofore paid by said employer to
19 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
20 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
21 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
22 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
23 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
24 each applicable pay period and upon termination. PLAINTIFF and members of the
25 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
26 according to proof, related penalties, interest, attorney fees and costs.

27 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses

1 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence
2 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
3 2802, employers are required to indemnify employees for all expenses incurred in the course
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
6 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
7 directions of the employer, even though unlawful, unless the employee, at the time of obeying
8 the directions, believed them to be unlawful."

9 23. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
10 Members as a business expense, were required by DEFENDANT to use their own personal
11 cellular phones as a result of and in furtherance of their job duties as employees for
12 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
13 with the use of their personal cellular phones and personal home offices for DEFENDANT's
14 benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required
15 by DEFENDANT to use their personal cellular phones and personal home offices. As a result,
16 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
17 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
18 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
19 benefit of DEFENDANT.

20 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
21 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
22 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
23 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
24 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
25 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
26 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
27 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
28 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business

1 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or
2 value of \$75,000.

3 JURISDICTION AND VENUE

4 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
6 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
7 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
10 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
11 in this County and/or conducts substantial business in this County, and (ii) committed the
12 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.
13

14 THE CALIFORNIA CLASS

15 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
18 all individuals who are or previously were employed by DEFENDANT in California and
19 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
20 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
21 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
22 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
26 accordingly.

27 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
28

1 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
 2 requirements, and the applicable provisions of California law, intentionally, knowingly, and
 3 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
 4 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
 5 enjoyed the benefit of this work, required employees to perform this work and permits or suffers
 6 to permit this work.

7 30. DEFENDANT has the legal burden to establish that each and every
 8 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
 9 required by California laws. The DEFENDANT, however, as a matter of policy and procedure
 10 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
 11 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
 12 as required by law. This common business practice is applicable to each and every
 13 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
 14 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
 15 causation, damages, and reliance are not elements of this claim.

16 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
 17 CLASS Members is impracticable.

18 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
 19 law by:

- 20 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
 21 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
 22 deceptively having in place company policies, practices and procedures
 23 that failed to record and pay PLAINTIFF and the other members of the
 24 CALIFORNIA CLASS for all time worked, including minimum wages
 25 owed and overtime wages owed for work performed by these employees;
 26 and,
- 27 (b) Committing an act of unfair competition in violation of the UCL, by
 28 failing to provide the PLAINTIFF and the other members of the

CALIFORNIA CLASS with the legally required meal and rest periods.

33. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS

Members.

34. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute

unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which

1 may adversely affect an individual's job with DEFENDANT or
2 with a subsequent employer, the Class Action is the only means to
3 assert their claims through a representative; and,

- 4 4) A class action is superior to other available methods for the fair
5 and efficient adjudication of this litigation because class treatment
6 will obviate the need for unduly and unnecessary duplicative
7 litigation that is likely to result in the absence of certification of
8 this action pursuant to Cal. Code of Civ. Proc. § 382.

9 35. This Court should permit this action to be maintained as a Class Action pursuant
10 to Cal. Code of Civ. Proc. § 382 because:

- 11 (a) The questions of law and fact common to the CALIFORNIA CLASS
12 predominate over any question affecting only individual CALIFORNIA
13 CLASS Members because the DEFENDANT's employment practices are
14 applied with respect to the CALIFORNIA CLASS;
- 15 (b) A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 (c) The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
25 able to obtain effective and economic legal redress unless the action is
26 maintained as a Class Action;
- 27 (e) There is a community of interest in obtaining appropriate legal and
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
 2 damages and injuries which DEFENDANT's actions have inflicted upon
 3 the CALIFORNIA CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of
 5 DEFENDANT are sufficient to adequately compensate the members of
 6 the CALIFORNIA CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally applicable
 8 to the CALIFORNIA CLASS, thereby making final class-wide relief
 9 appropriate with respect to the CALIFORNIA CLASS as a whole;

10 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
 11 the business records of DEFENDANT; and,

12 (i) Class treatment provides manageable judicial treatment calculated to bring
 13 a efficient and rapid conclusion to all litigation of all wage and hour
 14 related claims arising out of the conduct of DEFENDANT as to the
 15 members of the CALIFORNIA CLASS.

16 36. DEFENDANT maintains records from which the Court can ascertain and identify
 17 by job title each of DEFENDANT's employees who have been intentionally subjected to
 18 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
 19 seek leave to amend the Complaint to include any additional job titles of similarly situated
 20 employees when they have been identified.

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
 23 Eighth causes Action on behalf of a California sub-class, defined as all members of the
 24 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
 25 and classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
 26 time during the period three (3) years prior to the filing of the complaint and ending on the date
 27 as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant
 28

1 to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
 2 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

3 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
 4 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
 5 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
 6 to correctly calculate compensation for the time worked by PLAINTIFF and the other members
 7 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
 8 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
 9 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
 10 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
 11 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
 12 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
 13 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
 14 accordingly.

15 39. DEFENDANT maintains records from which the Court can ascertain and identify
 16 by name and job title, each of DEFENDANT's employees who have been intentionally
 17 subjected to DEFENDANT's company policy, practices and procedures as herein alleged
 18 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
 19 similarly situated employees when they have been identified.

20 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
 21 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

22 41. Common questions of law and fact exist as to members of the CALIFORNIA
 23 LABOR SUB-CLASS, including, but not limited, to the following:

- 24 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
 25 compensation due to members of the CALIFORNIA LABOR SUB-
 26 CLASS for missed meal and rest breaks in violation of the California
 27 Labor Code and California regulations and the applicable California Wage
 28 Order;

- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful.

42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer

1 must pay the employee all wages due without abatement, by failing to
2 tender full payment and/or restitution of wages owed or in the manner
3 required by California law to the members of the CALIFORNIA LABOR
4 SUB-CLASS who have terminated their employment; and,

- 5 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
6 the CALIFORNIA LABOR SUB-CLASS members with necessary
7 expenses incurred in the discharge of their job duties.

8 43. This Class Action meets the statutory prerequisites for the maintenance of a Class
9 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
11 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
12 Members is impracticable and the disposition of their claims as a class
13 will benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
15 that are raised in this Complaint are common to the CALIFORNIA
16 LABOR SUB-CLASS and will apply to every member of the
17 CALIFORNIA LABOR SUB-CLASS;
- 18 (c) The claims of the representative PLAINTIFF are typical of the claims of
19 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
20 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
21 was a non-exempt employee paid on an hourly basis who was subjected
22 to the DEFENDANT's practice and policy which failed to pay the correct
23 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
24 PLAINTIFF sustained economic injury as a result of DEFENDANT's
25 employment practices. PLAINTIFF and the members of the
26 CALIFORNIA LABOR SUB-CLASS were and are similarly or
27 identically harmed by the same unlawful, deceptive, and unfair
28 misconduct engaged in by DEFENDANT; and,

1 (d) The representative PLAINTIFF will fairly and adequately represent and
2 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
3 retained counsel who are competent and experienced in Class Action
4 litigation. There are no material conflicts between the claims of the
5 representative PLAINTIFF and the members of the CALIFORNIA
6 LABOR SUB-CLASS that would make class certification inappropriate.
7 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
8 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

9 44. In addition to meeting the statutory prerequisites to a Class Action, this action is
10 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

11 (a) Without class certification and determination of declaratory, injunctive,
12 statutory and other legal questions within the class format, prosecution of
13 separate actions by individual members of the CALIFORNIA LABOR
14 SUB-CLASS will create the risk of:

- 15 1) Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA LABOR SUB-CLASS which
17 would establish incompatible standards of conduct for the parties
18 opposing the CALIFORNIA LABOR SUB-CLASS; or,
19 2) Adjudication with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS which would as a practical
21 matter be dispositive of interests of the other members not party to
22 the adjudication or substantially impair or impede their ability to
23 protect their interests.

24 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
25 or refused to act on grounds generally applicable to the CALIFORNIA
26 LABOR SUB-CLASS, making appropriate class-wide relief with respect
27 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
28 DEFENDANT fails to pay all wages due. Including the correct wages for

1 all time worked by the members of the CALIFORNIA LABOR SUB-
2 CLASS as required by law;

3 (c) Common questions of law and fact predominate as to the members of the
4 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
5 violations of California Law as listed above, and predominate over any
6 question affecting only individual CALIFORNIA LABOR SUB-CLASS
7 Members, and a Class Action is superior to other available methods for
8 the fair and efficient adjudication of the controversy, including
9 consideration of:

10 1) The interests of the members of the CALIFORNIA LABOR SUB-
11 CLASS in individually controlling the prosecution or defense of
12 separate actions in that the substantial expense of individual
13 actions will be avoided to recover the relatively small amount of
14 economic losses sustained by the individual CALIFORNIA
15 LABOR SUB-CLASS Members when compared to the substantial
16 expense and burden of individual prosecution of this litigation;

17 2) Class certification will obviate the need for unduly duplicative
18 litigation that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will
2 avoid asserting their legal rights out of fear of retaliation by
3 DEFENDANT, which may adversely affect an individual's job
4 with DEFENDANT or with a subsequent employer, the Class
5 Action is the only means to assert their claims through a
6 representative; and,

- 7 4) A class action is superior to other available methods for the fair
8 and efficient adjudication of this litigation because class treatment
9 will obviate the need for unduly and unnecessary duplicative
10 litigation that is likely to result in the absence of certification of
11 this action pursuant to Cal. Code of Civ. Proc. § 382.

12 45. This Court should permit this action to be maintained as a Class Action pursuant
13 to Cal. Code of Civ. Proc. § 382 because:

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR
15 SUB-CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 LABOR SUB-CLASS because in the context of employment litigation a
20 substantial number of individual CALIFORNIA LABOR SUB-CLASS
21 Members will avoid asserting their rights individually out of fear of
22 retaliation or adverse impact on their employment;
- 23 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that it is impractical to bring all members of the CALIFORNIA
25 LABOR SUB-CLASS before the Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
27 Members, will not be able to obtain effective and economic legal redress
28 unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
 2 equitable relief for the acts of unfair competition, statutory violations and
 3 other improprieties, and in obtaining adequate compensation for the
 4 damages and injuries which DEFENDANT's actions have inflicted upon
 5 the CALIFORNIA LABOR SUB-CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
 7 DEFENDANT are sufficient to adequately compensate the members of
 8 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
 10 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
 11 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
 12 CLASS as a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
 14 ascertainable from the business records of DEFENDANT. The
 15 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
 16 CLASS Members who worked for DEFENDANT in California at any
 17 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to bring
 19 a efficient and rapid conclusion to all litigation of all wage and hour
 20 related claims arising out of the conduct of DEFENDANT as to the
 21 members of the CALIFORNIA LABOR SUB-CLASS.

22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

24 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

25 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

26 46. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
 27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
 28

1 Complaint.

2 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
3 Code § 17021.

4 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
5 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
6 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
7 competition as follows:

8 Any person who engages, has engaged, or proposes to engage in unfair
9 competition may be enjoined in any court of competent jurisdiction. The court
10 may make such orders or judgments, including the appointment of a receiver, as
11 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

12 Cal. Bus. & Prof. Code § 17203.

13 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Industrial Wage Order(s), the California Code of Regulations and the California
16 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
17 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
18 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
19 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
20 unfair competition, including restitution of wages wrongfully withheld.

21 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
22 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
23 unscrupulous or substantially injurious to employees, and were without valid justification or
24 utility for which this Court should issue equitable and injunctive relief pursuant to Section
25 17203 of the California Business & Professions Code, including restitution of wages wrongfully
26 withheld.

27 51. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
28 fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated

1 meal and rest periods, the required amount of compensation for missed meal and rest periods
2 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
3 al necessary business expenses incurred, and failed to provide Fair Labor Standards Act
4 overtime wages due for overtime worked as a result of failing to include non-discretionary
5 incentive compensation into their regular rates of pay for purposes of computing the proper
6 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
7 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
8 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
9 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

10 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
12 other members of the CALIFORNIA CLASS to be underpaid during their employment with
13 DEFENDANT.

14 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
15 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
16 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
17 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

18 54. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
19 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
20 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
21 for each workday in which a second off-duty meal period was not timely provided for each ten
22 (10) hours of work.

23 55. PLAINTIFF further demands on behalf of herself and each member of the
24 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
25 duty paid rest period was not timely provided as required by law.

26 56. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

4 57. All the acts described herein as violations of, among other things, the Industrial
5 Welfare Commission Wage Orders, the California Code of Regulations, and the California
6 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
7 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
8 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

9 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
10 and do, seek such relief as may be necessary to restore to them the money and property which
11 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
13 unfair business practices, including earned but unpaid wages for all time worked.

14 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
17 engaging in any unlawful and unfair business practices in the future.

18 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
19 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
20 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
21 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
22 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
23 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
24 engage in these unlawful and unfair business practices.

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SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

62. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

63. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

67. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

2 68. In committing these violations of the California Labor Code, DEFENDANT
3 inaccurately calculated the correct time worked and consequently underpaid the actual time
4 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
5 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
6 benefits in violation of the California Labor Code, the Industrial Welfare Commission
7 requirements and other applicable laws and regulations.

8 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
10 receive the correct minimum wage compensation for their time worked for DEFENDANT.

11 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
12 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
13 Members to work without paying them for all the time they were under DEFENDANT's
14 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
16 were entitled to, constituting a failure to pay all earned wages.

17 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
18 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS for the true time they worked, PLAINTIFF and the other members of the
20 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
21 injury in amounts which are presently unknown to them and which will be ascertained
22 according to proof at trial.

23 72. DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
25 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
26 to not pay employees for their labor as a matter of company policy, practice and procedure, and
27 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
28 of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

73. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

1 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
2 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
3 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
4 these employees for all overtime worked, including, work performed in excess of eight (8)
5 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
6 workweek.

7 77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
8 public policy, an employer must timely pay its employees for all hours worked.

9 78. Cal. Lab. Code § 510 further provides that employees in California shall not be
10 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
11 unless they receive additional compensation beyond their regular wages in amounts specified
12 by law.

13 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
14 including minimum wage and overtime compensation and interest thereon, together with the
15 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
16 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

17 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
18 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
19 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
20 including overtime work.

21 81. DEFENDANT's unlawful wage and hour practices manifested, without
22 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
23 implementing a policy and practice that failed to accurately record overtime worked by
24 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
27 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
28 workweek.

1 82. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
3 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
5 of the California Labor Code, the Industrial Welfare Commission requirements and other
6 applicable laws and regulations.

7 83. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
9 receive full compensation for overtime worked.

10 84. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
11 from the overtime requirements of the law. None of these exemptions are applicable to the
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
14 subject to a valid collective bargaining agreement that would preclude the causes of action
15 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself
16 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
17 negotiable, non-waiveable rights provided by the State of California.

18 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
19 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
20 worked that they are entitled to, constituting a failure to pay all earned wages..

21 86. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
22 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
23 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
24 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
25 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
26 failed to accurately record and pay as evidenced by DEFENDANT's business records and
27 witnessed by employees.

28 87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned

1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
4 injury in amounts which are presently unknown to them and which will be ascertained
5 according to proof at trial.

6 88. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
8 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
9 to not pay employees for their labor as a matter of company policy, practice and procedure, and
10 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
11 of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

12 89. In performing the acts and practices herein alleged in violation of California labor
13 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
14 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
15 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
16 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
17 disregard for their legal rights, or the consequences to them, and with the despicable intent of
18 depriving them of their property and legal rights, and otherwise causing them injury in order
19 to increase company profits at the expense of these employees.

20 90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
22 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
23 by the California Labor Code and/or other applicable statutes. To the extent minimum and/or
24 overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS
25 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
26 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
27 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
28 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein

1 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

5 **For Failure to Provide Required Meal Periods**

6 **[Cal. Lab. Code §§ 226.7 & 512]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
10 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
11 of this Complaint.

12 92. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
13 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
14 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
15 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
16 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
17 duties for the legally required off-duty meal periods. As a result of their rigorous work
18 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
19 time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
20 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
21 Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced
22 by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
23 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
24 in some workdays in which these employees were required by DEFENDANT to work ten (10)
25 hours of work from time to time. As a result, PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional
27 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

28 93. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

94. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

95. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

96. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

97. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

98. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

99. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

100. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate by the employee.

2 101. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
4 wage statements which failed to show, among other things, the correct gross and net wages
5 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other
7 things, gross wages earned and all applicable hourly rates in effect during the pay period and
8 the corresponding amount of time worked at each hourly rate. DEFENDANT failed to list
9 the hourly rate and total hours worked for the “Salary Non-Exempt” and “Regular Retro”
10 wage payments in violation of Cal. Lab. Code 226(a)(9). Aside, from the violations listed
11 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
12 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
13 DEFENDANT from time to time provided PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code
15 § 226.

16 102. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
17 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
19 expended calculating the correct wages for all missed meal and rest breaks and the amount
20 of employment taxes which were not properly paid to state and federal tax authorities.
21 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
23 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
24 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
25 226, in an amount according to proof at the time of trial (but in no event more than four
26 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
27 CALIFORNIA LABOR SUB-CLASS herein).

28 ///

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

103. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

104. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones and personal home offices in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF

1 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
 2 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
 3 these expenses as an employer is required to do under the laws and regulations of California.

4 106. PLAINTIFF therefore demands reimbursement for expenditures or losses
 5 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
 6 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
 7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8 **EIGHTH CAUSE OF ACTION**

9 **For Failure to Pay Wages When Due**

10 **[Cal. Lab. Code §§ 201, 202, 203]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
 12 **and Against All Defendants)**

13 107. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
 14 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
 15 paragraphs of this Complaint.

16 108. Cal. Lab. Code § 200 provides, in relevant part, that:

17 As used in this article:

18 (a) "Wages" includes all amounts for labor performed by employees of
 every description, whether the amount is fixed or ascertained by the
 standard of time, task, piece, Commission basis, or other method of calculation.

19 (b) "Labor" includes labor, work, or service whether rendered or
 20 performed under contract, subcontract, partnership, station plan, or other
 agreement if the labor to be paid for is performed personally by the person
 21 demanding payment.

22 109. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
 23 discharges an employee, the wages earned and unpaid at the time of discharge are due and
 24 payable immediately."

25 110. Cal. Lab. Code § 202 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his
 or her employment, his or her wages shall become due and payable not
 27 later than 72 hours thereafter, unless the employee has given 72 hours
 previous notice of his or her intention to quit, in which case the employee
 is entitled to his or her wages at the time of quitting. Notwithstanding any
 28 other provision of law, an employee who quits without providing a 72-

hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

111. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

112. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

114. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS; and,
- 4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
5 for restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 8 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
9 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
10 action pursuant to Cal. Code of Civ. Proc. § 382;
- 11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for minimum and overtime compensation due PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
15 statutory rate;
- 16 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per each member of
18 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
19 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
20 an award of costs for violation of Cal. Lab. Code § 226;
- 21 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
22 the applicable IWC Wage Order;
- 23 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
24 1197;
- 25 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
27 costs of suit.; and,
- 28 G) The wages of all terminated employees in the CALIFORNIA LABOR

1 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
2 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3 3. On all claims:

- 4 A) An award of interest, including prejudgment interest at the legal rate;
5 B) Such other and further relief as the Court deems just and equitable; and,
6 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
7 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
8 and/or §2802.

9 Dated: February 23, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

10
11
12 By: /s/ Nicholas De Blouw
13 Nicholas J. De Blouw
14 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: February 23, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw

Nicholas J. De Blouw
Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA CIVIL DIVISION 600 ADMINISTRATION DRIVE, ROOM 107-J SANTA ROSA, CALIFORNIA 95403-2878 (707) 521-6500 http://www.sonoma.courts.ca.gov _____ Watters v. Morgan Stanley Smith Barney LLC	(FOR COURT USE ONLY) ELECTRONICALLY FILED Superior Court of California County of Sonoma 2/24/2022 10:16 AM Arlene D. Junior, Clerk of the Court By: Melisa Kennedy, Deputy Clerk
NOTICE OF ASSIGNMENT TO ONE JUDGE FOR ALL PURPOSES, NOTICE OF CASE MANAGEMENT CONFERENCE, and ORDER TO SHOW CAUSE	Case number: SCV-270269

**A COPY OF THIS NOTICE MUST BE SERVED WITH THE SUMMONS AND COMPLAINT
AND WITH ANY CROSS-COMPLAINT**

1. **THIS ACTION IS ASSIGNED TO HON.** Patrick Broderick
FOR ALL PURPOSES.
 Pursuant to California Rules of Court, Rule 2.111(7), the assigned judge's name must appear below the number of the case and the nature of the paper on the first page of each paper presented for filing.
2. **EACH DEFENDANT MUST FILE A WRITTEN RESPONSE TO THE COMPLAINT AS REQUIRED BY THE SUMMONS.**

A Case Management Conference has been set at the time and place indicated below:

Date: 06/28/2022	Time: 3:00 PM	Courtroom: 17
Location: 3035 CLEVELAND AVE STE 200 SANTA ROSA, CA 95403		

3. No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement [Judicial Council form #CM-110] and serve it on all other parties in the case. In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.
4. At the conference, counsel for each party and each self-represented party must appear personally or by telephone [California Rules of Court, Rule 3.670(c)(2)]; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in California Rules of Court, Rule 3.727.
5. Pre-approved dispositions are recorded three (3) court days prior to the case management conference. These may be obtained by calling (707) 521-6883 or by going to <http://sonoma.courts.ca.gov/online-services/tentative-rulings>.

ORDER TO SHOW CAUSE

To Plaintiff(s), Cross-complainants, and/or their attorneys of record:

If, on the date shown above, you are not in compliance with the requirements stated in the California Rules of Court, rules 2.30, 3.110, and/or 3.720 through 3.771 inclusive, you must then and there show cause why this court should not impose monetary and/or terminating sanctions in this matter.

Pursuant to California Rule of Court, rule 3.221(b), information and forms related to Alternative Dispute Resolution are available on the Court's website at <http://www.sonoma.courts.ca.gov/self-help/adr>.

ELECTRONIC SERVICE OF DOCUMENTS**Enabled by Local Rule 18.16**

Voluntary e-service is available in Sonoma County. The Court has pre-approved a Stipulation for cases in which the attorneys or parties choose e-service. A copy of the Stipulation is available under the "Civil" section in the "Division" tab of the Court website: <http://www.sonoma.courts.ca.gov>. The advantages of e-service to the parties include:

SAVE MONEY	Reduction in costs related to photocopying, retrieving, storing, messenger and postage fees. No special software is needed to use e-service
SAVE TIME	Instant service of your documents on all parties
SAVE SPACE	With 24/7 internet access to all documents, you do not need to house paper copies
GAIN CERTAINTY	Immediate confirmation of service for your records. Documents are not delayed in the mail or blocked by email spam blockers and firewalls

To take advantage of e-service, select an e-service provider and file the signed Stipulation with the Court. Parties can then e-serve documents through the selected provider. Information about e-service providers is available at the website for the Sonoma County Bar Association: <http://www.sonomacountybar.org>. The Court does not endorse one provider over another.

To learn more about available e-service providers and their fees, please visit their website

Note: *Hard-copy pleadings are required to be filed with the Court in accordance with applicable provisions of the Code of Civil Procedure, California Rules of Court and local rules. You do not need to provide a courtesy copy of a served document to the specific department in which the matter has been assigned.*

DISCOVERY FACILITATOR PROGRAM

Effective January 1, 2008, the Sonoma County Superior Court promulgated Sonoma County Local Rule 4.14 which established the Discovery Facilitator Program. Participation in the Discovery Facilitator Program shall be deemed to satisfy a party's obligation to meet and confer under Sonoma County Local Rule 5.5 and applicable provisions of the Code of Civil Procedure and California Rules of Court. This program has been providing assistance in resolving discovery disputes and reducing the backlog of matters on the law and motion calendars in our civil law departments. The Sonoma County Superior Court encourages all attorneys and parties to utilize the Discovery Facilitator Program in order to help resolve or reduce the issues in dispute whether or not a discovery motion is filed.

There is a link to Local Rule 4.14 and the list of discovery facilitator volunteers on the official website of the Sonoma County Superior Court at <http://www.sonoma.courts.ca.gov>. On the home page, under the "AVAILABLE PROGRAMS & HELP" section, click on »Discovery Facilitator Program. You can then click on either "Local Rule 4.14" to obtain the language of the local rule, or "List of Facilitators" for a list of the volunteer discovery facilitators and accompanying contact and biographical information.

Pursuant to Local Rule 5.1.C:

The moving party shall, on the date of filing, hand-deliver to the Assigned Judge a courtesy copy, which need not be file-endorsed, of any motion filed. The responding party shall, on the date of filing, hand-deliver to the Assigned Judge a courtesy copy, which need not be file-endorsed, of all opposition papers. Finally, the moving party shall, on the date of filing, hand-deliver to the Assigned Judge a courtesy copy, which need not be file-endorsed, of all reply papers.

Pursuant to Local Rule 5.1.C.1:

If any matter scheduled on the law and motion calendar is resolved, dismissed, settled or becomes moot for any reason, the moving party shall immediately notify the judicial assistant for the Assigned Judge if the motion is to be dropped from the law and motion calendar. Said notification may be made by telephone, followed by a letter of confirmation.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Norman B. Blumenthal (Bar # 68687) Blumenthal Nordrehaug Bhowmik De Blouw LLP 2255 Calle Clara La Jolla, CA 92037 TELEPHONE NO.: (858) 551-1223 FAX NO.: (858) 551-1232 ATTORNEY FOR (Name): Plaintiff Dawn Watters		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California County of Sonoma 2/24/2022 10:16 AM Arlene D. Junior, Clerk of the Court By: Melisa Kennedy, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 600 Administration Drive, Room 107J MAILING ADDRESS: 600 Administration Drive, Room 107J CITY AND ZIP CODE: Santa Rosa 95403 BRANCH NAME: Hall of Justice		
CASE NAME: DAWN WATTERS v. MORGAN STANLEY SMITH BARNEY LLC		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: SCV-270269 JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): EIGHT (8)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 24, 2022

Nicholas J. De Blouw

(TYPE OR PRINT NAME)

/s/ Nicholas De Blouw

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

B. ARBITRATION: The parties jointly employ a neutral third party or a panel of neutrals to listen to both sides and render a decision. The parties are free to make the arbitrator's decision binding or non-binding. When non-binding, the arbitrator's decision serves as guide or influence upon the parties to bring them closer to settlement. If it is binding, the decision of the arbitrator will be final and generally avoids any further proceedings in the case. Non-binding judicial arbitration may be ordered in certain cases before trial.

C. EARLY NEUTRAL EVALUATION: A neutral evaluator is hired by the parties to give an evaluation of the case to help settle it. You or your attorney will be permitted to prepare a written statement, present critical witnesses or other evidence, argue your case to the evaluator, meet separately and confidentially with the evaluator, and utilize the evaluator to communicate any settlement offers to the opposing party.

D. PRIVATE SETTLEMENT CONFERENCE: A voluntary settlement conference is similar to early neutral evaluation in that the parties employ a neutral settlement officer who attempts to persuade the parties to accept a compromise position. It is a form of facilitated negotiation in which the settlement officer may express an opinion about the value of the case, the substantive merits of each party's position, and the probable outcome of the trial.

There are various other methods or combinations of methods of ADR, such as summary jury trial, mini-trial, special master and discovery referee. The court encourages the parties to be creative in selecting the process which has the best chance of resolving the case as quickly, effectively, and inexpensively as possible. You will have a chance to review your ADR options at the time of the Early Mediation and Case Management Conference.

The undersigned party is willing to agree to any of the following forms of ADR at this time (for family law and probate actions only). Your selection will inform the other parties in the case of your current thoughts regarding the use of ADR. If all parties agree on a particular ADR method, you will be asked to file a stipulation on the court's form. The stipulation form (Sonoma County Superior Court form #MISC-101) can be found at the court's web site and is available at the court.)

- | | |
|--|--|
| <input type="checkbox"/> Mediation | <input type="checkbox"/> Early Neutral Evaluation |
| <input type="checkbox"/> Non-binding Private Arbitration | <input type="checkbox"/> Binding Private Arbitration |
| <input type="checkbox"/> Voluntary Settlement Conference | <input type="checkbox"/> Summary Jury Trial |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Judicial Arbitration |

I / We certify that I / We have read and understood (or have had explained to me / us) the foregoing.

Date: _____

Signature of Party

Date: _____

Signature of Party

Date: _____

Signature of Attorney for Party

☐ Additional signatures are attached

NOTE: This form requires the signatures of the parties and their attorney. All parties must complete, file and serve this form in accordance with Sonoma County Superior Court Rules, Rule 16. See Rule 16.3 for specific filing and service instructions.



Superior Court of California County of Sonoma

Bradford J. DeMeo
Presiding Judge

ACCESS, SERVICE, JUSTICE

Arlene D. Junior
Court Executive Officer

NOTICE OF NONAVAILABILITY OF COURT REPORTERS

Monday, November 15, 2021

Temporary Policy Regarding Non-Availability of Official Court Reporting Services in Civil Departments Sonoma Superior Court. Pursuant to California Rule of Court 2.956 (b)(1), and effective immediately, the Superior Court of California, County of Sonoma, will post the Departments in which the services of Official Court Reporters will not normally be available during regular Court hours. A notice shall be posted on the outside of each affected Department and in the Clerk's Office, Room 107, Empire Annex, and Civil and Family Courthouse. The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases. As provided in Rule 2.956(e)(1), the term "civil cases" includes all matters other than criminal and juvenile matters. This nonavailability extends to all civil cases hearings or proceedings of any kind or nature, including but not limited to law and motion hearings, ex parte applications, long-cause hearings, and trials. Effective November 16, 2021, the departments which normally hear civil cases are Departments 16, 17, 18, 19 and 23 for LPS matters and guardianship matters. As provided in Rule 2.956(c), parties may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is the party's responsibility to pay the reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law. If a party arranges and pays for the attendance of the certified shorthand reporter, none of the parties will be charged the reporter's attendance fee provided for in Government Code section 68086, subdivisions (a)(1) or (b)(1). The stenographic notes of the certified shorthand reporter are the official records of the court and shall be secured by the court in either paper and/or electronic format in accordance with Government Code section 69955(a), (b), (c) and (d). In all cases, the plaintiff shall serve "Notice of "Non-Availability of Official Court Reporting Services in Civil Departments" ("Notice") with the complaint. Likewise, the cross-complainant must serve the Notice on any new parties to the action. The service information must be included on the Proof of Service of Summons. In addition, parties that file motions must serve the Notice on all parties in the case. The service information must be included on the Proof of Services by Mail. (Eff. 11/16/2021)

EXHIBIT B

1 ANDREW R. LIVINGSTON (SBN 148646)
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7 Attorneys for Defendant
MORGAN STANLEY SMITH BARNEY LLC

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
5/16/2022 1:44 PM
Arlene D. Junior, Clerk of the Court
By: Griselda Zavala, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SONOMA**

11 DAWN WATTERS an individual, on behalf of
12 herself and on behalf of all persons similarly
situated,

13 **Plaintiff,**

14 **v.**

15 MORGAN STANLEY SMITH BARNEY
16 LLC, a Limited Liability Company; and DOES
1 through 50, inclusive,

17 **Defendants.**
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Case No. SCV-270269

**DEFENDANT MORGAN STANLEY
SMITH BARNEY LLC'S ANSWER**

1 Defendant MORGAN STANLEY SMITH BARNEY LLC (“MSSB”) hereby responds to
2 the Complaint filed by Plaintiff Dawn Watters (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 MSSB files this general denial pursuant to California Code of Civil Procedure section
5 431.30(d) and generally denies each and every material allegation of the unverified Complaint.
6 MSSB denies that it engaged in any of the unlawful conduct alleged in the Complaint and further
7 denies that Plaintiff or the putative class has been damaged in the manner or amount alleged, or in
8 any manner or amount.

9 **AFFIRMATIVE DEFENSES**

10 Without conceding that it bears the burden of proof or persuasion as to any of them,
11 MSSB asserts the following separate defenses to the allegations set forth in the Complaint:

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Arbitration)**

14 1. As a separate defense to the Complaint and each cause of action therein, MSSB
15 asserts that Plaintiff and/or the putative class members agreed to resolve any disputes with MSSB
16 through arbitration, and pursuant to the arbitration agreement(s), Plaintiff’s claims and the claims
17 of other putative class members must proceed on an individual basis through arbitration and not
18 on a class, collective, or representative basis.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Failure to State a Claim)**

21 2. As a separate defense to the Complaint and to each cause of action therein, MSSB
22 alleges that Plaintiff fails to state a claim upon which relief may be granted.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Unclean Hands)**

25 3. As a separate defense to the Complaint and each cause of action therein, MSSB
26 alleges that recovery by Plaintiff and/or the putative class members is barred in whole or in part
27 by their own unclean hands and by the doctrine of *in pari delicto*.

28 //

FOURTH AFFIRMATIVE DEFENSE

(Causation)

4. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that no conduct by or attributable to it was the cause in fact or legal cause of the damages, if any, suffered by Plaintiff and the putative class members.

FIFTH AFFIRMATIVE DEFENSE

(Own Conduct)

5. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that, should it be determined that Plaintiff or the putative class members have been damaged, said damages were proximately caused by their own conduct.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Use Ordinary Care or Follow Directions)

6. As a separate defense to the Complaint and each cause of action therein, MSSB alleges that Plaintiff and the putative class members failed to comply with California Labor Code sections 2854, 2856, 2858 and 2859, respectively, to the extent that Plaintiff and the putative class members that she seeks to represent failed to use ordinary care and diligence in the performance of their duties, failed to substantially comply with the reasonable directions of their alleged employer, and failed to exercise a reasonable degree of skill in performing their job duties.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

7. As a separate defense to the Complaint and each cause of action therein, MSSB alleges that the claims of Plaintiff and the putative class members are barred by the applicable statute(s) of limitations, including but not limited to California Code of Civil Procedure sections 338, 340(a) and 340(b) and California Bus. & Prof. Code section 17208.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

8. As a separate defense to the Complaint and each cause of action therein, MSSB alleges that Plaintiff and the putative class members unreasonably delayed bringing this action to

1 the prejudice of MSSB, and therefore the Complaint and each cause of action therein is barred by
2 the doctrine of laches.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Failure to Mitigate)**

5 9. As a separate defense to the Complaint and each cause of action therein, MSSB
6 alleges that recovery in this action by Plaintiff and the putative class members is barred in whole
7 or in part by their failure to exercise reasonable care and diligence to mitigate any damages
8 allegedly accruing to them.

9 **TENTH AFFIRMATIVE DEFENSE**

10 **(Estoppel)**

11 10. As a separate defense to the Complaint and to each cause of action therein, MSSB
12 alleges that Plaintiff and the putative class members, by their acts or omissions, are estopped from
13 asserting any claims upon which they now seek relief.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 **(No Equitable Relief)**

16 11. As a separate defense to the Complaint and each cause of action therein, MSSB
17 alleges that Plaintiff and the putative class members are not entitled to equitable relief because the
18 Complaint fails to allege facts sufficient to justify equitable relief and/or they have failed to avail
19 themselves of or exhaust plain, adequate, or complete remedies of laws available to them under
20 the provisions of applicable state or federal law.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 **(Good Faith)**

23 12. As a separate defense to the Complaint and each cause of action therein, MSSB
24 alleges that it acted in good faith and had reasonable grounds for believing its actions did not
25 violate the Labor Code, but, if such conduct is found to have occurred, it is the result of a good
26 faith dispute over wages due and the timing of wages due.

27 //

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THIRTEENTH AFFIRMATIVE DEFENSE

(No Willful Conduct)

13. As a separate defense to the Complaint and each cause of action therein, MSSB denies the allegations contained therein, but, if such conduct is found to have occurred, MSSB's actions were not willful, including any alleged failure to pay wages due at termination.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Standing)

14. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that Plaintiff and the putative class members lack standing.

FIFTEENTH AFFIRMATIVE DEFENSE

(Waiver)

15. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that Plaintiff and the putative class members waived any right to any of the claims upon which they now seek relief.

SIXTEENTH AFFIRMATIVE DEFENSE

(Payment, Setoff, Accord and Satisfaction)

16. As a separate defense to the Complaint and each cause of action therein, MSSB alleges that the claims of Plaintiff and the putative class members are barred by payment, setoff, and/or accord and satisfaction.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

17. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that any recovery by Plaintiff and the putative class members is barred or must be reduced as a result of comparative fault.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Collect)

18. As a separate defense to the Complaint and each cause of action therein, MSSB alleges that the claims for waiting time penalties are barred because Plaintiff and the putative

1 class members failed to return to the office in which they worked for payment of wages as
 2 required by the Labor Code, including but not limited to Section 208.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 **(Settlement and Release)**

5 19. As a separate defense to the Complaint and each cause of action therein, MSSB
 6 alleges that the claims of Plaintiff and the putative class members are barred by the doctrine of
 7 settlement and release.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 **(Consent and Ratification)**

10 20. As a separate defense to the Complaint and each cause of action therein, MSSB
 11 alleges that Plaintiff and the putative class members approved, consented to and/or ratified some
 12 or all of the actions now complained of.

13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

14 **(Class Action Requirements)**

15 21. As a separate defense to the Complaint and each cause of action therein, MSSB
 16 alleges that Plaintiff cannot satisfy the requirements for a class action.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Due Process)**

19 22. As a separate defense to the Complaint and to each cause of action therein, use of a
 20 class action mechanism would be unconstitutional under the United States Constitution and the
 21 California Constitution and violative of MSSB's due process, including but not limited to because
 22 MSSB retains the right to assert the exemption defense as to every potential class member.

23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 **(Conflict of Interest)**

25 23. As a separate defense to the Complaint and to each cause of action therein, MSSB
 26 alleges that Plaintiff's interests are in conflict with the interests of the putative class members.

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28 //

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Constitutionality of Penalties)

24. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that Plaintiff and the putative class members are not entitled to recover penalties because, under the facts and circumstances of this case, any such recovery would be excessive, unjust, arbitrary, oppressive, confiscatory and/or unconstitutional.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Res Judicata)

25. As a separate defense to the Complaint and each cause of action therein, the Complaint is barred by the doctrines of *res judicata* and/or collateral estoppel.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Failure to Comply with Statutory Requirements)

26. As a separate defense to the Complaint and each cause of action therein, MSSB alleges that Plaintiff's purported representative claims under the California Business & Professions Code section 17200 et seq. are barred by the provisions of California Business & Professions Code sections 17203 and 17204.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

27. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that Plaintiff and the putative class members are not entitled to any recovery because it would result in unjust enrichment.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Compensatory Damages)

28. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that Plaintiff and the putative class members fail to state facts sufficient to support an award of compensatory or any other damages against MSSB.

//

//

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Timely Demand For Wages Payable)

29. As a separate defense to the Complaint and to each cause of action therein, MSSB alleges that Plaintiff and the putative class members failed to timely make a demand in writing for wages due and payable.

THIRTIETH AFFIRMATIVE DEFENSE

(Unknown Defenses)

30. MSSB has insufficient knowledge or information on which to form a belief as to whether it has any additional, as yet unstated, defenses available. MSSB reserves the right to assert additional defenses in the event discovery indicates that to do so would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, MSSB prays for relief as follows:

1. That the Complaint be dismissed with prejudice and Plaintiff take nothing thereby;
2. That judgment be entered in favor of MSSB on all claims;
3. For MSSB's cost of suit herein, including reasonable attorneys' fees; and
4. For such other and further relief as the Court deems just.

Dated: May 16, 2022

ANDREW R. LIVINGSTON
RACHEL CAPLER
Orrick, Herrington & Sutcliffe LLP

By: 

ANDREW R. LIVINGSTON
Attorneys for Defendant
MORGAN STANLEY SMITH BARNEY LLC

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Orrick, Herrington & Sutcliffe LLP, 405 Howard Street, San Francisco, California 94105. On May 16, 2022, I served the following document(s) listed below as follows:

- 1. DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT; and**
- 2. PROOF OF SERVICE.**

By transmitting true and correct copies, via electronic mail in Adobe PDF format, to the electronic address(es) set forth below. My electronic service address is rcapler@orrick.com.

Blumenthal Nordrehaug Bhowmik De Blouw LLP
Norm Blumenthal
norm@bamlawca.com
Kyle Nordrehaug
kyle@bamlawca.com
AJ Bhowmik
aj@bamlawca.com
Nicholas De Blouw
nick@bamlawca.com
Charlotte James
charlotte@bamlawca.com
2255 Calle Clara
San Diego, CA 92037

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 16, 2022 at San Francisco, California.



Rachel Capler

EXHIBIT C

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Piya Mukherjee (State Bar #274217)

Charlotte E. James (State Bar #308441)

2255 Calle Clara

La Jolla, CA 92037

T: (858)551-1223; F: (858) 551-1232

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

DAWN WATTERS, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

MORGAN STANLEY SMITH BARNEY LLC
a Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. SCV-270269

**PLAINTIFF'S REQUEST FOR
DISMISSAL OF CLASS ACTION,
WITHOUT PREJUDICE**

Judge: Hon. Patrick Broderick
Dept.: 17

Action Filed: February 24, 2022

1 Plaintiff DAWN WATTERS (“Plaintiff”) by and through her counsel, hereby respectfully
2 requests that the Court dismiss Plaintiff’s putative class action lawsuit, without prejudice. Each
3 side is to bear their own respective fees and costs.

4 The Declaration of Charlotte James (“James Dec.”) pursuant to CRC 3.770 regarding the
5 dismissal of the Action without prejudice is filed concurrently herewith.

6
7 Dated: May 16, 2022

BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP

By: /s/ Charlotte James

Piya Mukherjee
Charlotte James
Attorneys for Plaintiff
DAWN WATTERS

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

DAWN WATTERS, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

MORGAN STANLEY SMITH BARNEY LLC a
Limited Liability Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. SCV-270269

**DECLARATION OF CHARLOTTE E.
JAMES IN SUPPORT OF PLAINTIFF'S
REQUEST FOR DISMISSAL OF ACTION
WITHOUT PREJUDICE PURSUANT TO
CRC 3.770**

Judge: Hon. Patrick Broderick
Dept.: 17

Date Filed: February 24, 2022

1 I, CHARLOTTE E. JAMES, hereby declare,

2 1. I am an attorney at the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
3 I am licensed to practice law in the State of California and am counsel of record for Plaintiff Dawn Waters
4 (“Plaintiff”) in this action. I have personal knowledge of the matters set forth below and could competently
5 testify thereto if called and sworn as a witness.

6 2. Plaintiff submits this declaration pursuant to rule 3.770 of the California Rules of Court in
7 connection with the concurrently filed Request for Dismissal of Action, Without Prejudice.

8 3. Plaintiff requests that this Court dismiss the Action, including all putative class allegations,
9 without prejudice.

10 4. Plaintiff commenced this action on February 24, 2022. In her Complaint against
11 Defendant, Plaintiff asserts claims on behalf of herself and a putative class for Violations of the Unfair
12 Competition Law, Failure to Pay Minimum Wages, Failure to Pay Overtime Wages, Failure to Provide
13 Required Meal Periods, Failure to Provide Required Rest Periods, Failure to Provide Accurate Itemized
14 Wage Statements, Failure to Reimburse Employees for Required Expenses, Failure to Provide Wages
15 When Due.

16 5. Subsequent to Plaintiff’s filing the action, the Parties engaged in discussions and informal
17 discovery. As part of these discussions, Plaintiff became aware that Plaintiff signed an arbitration
18 agreement that includes a class action waiver.

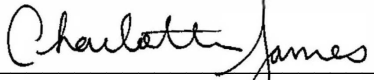
19 6. Given that there is an arbitration agreement that includes a class action waiver, Plaintiff
20 has agreed to dismiss this Action, including all class claims, without prejudice.

21 7. The Court has not ruled on a motion for class certification and no mailing, including a
22 *Belaire-West* notice, was made to the putative class members. The putative class members were not
23 provided with formal or informal notice of the existence of this action. Therefore, dismissal of the class
24 action, without prejudice, will not result in prejudice to any of the putative class members. Accordingly,
25 pursuant to rule 3.770(c) of the California Rules of Court, Plaintiff’s class action may be dismissed without
26 prejudice and without notice to the putative class members.


27 8. No consideration, direct or indirect, has been provided to Plaintiff for the dismissal of the
28 Action, including all class allegations, without prejudice.

1 I declare under penalty of perjury under the laws of California that the foregoing is true and
2 correct.

3 Executed on May 16, 2022 at La Jolla, California.

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6 Charlotte E. James
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NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

- 
(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Watters v. Morgan Stanley Smith Barney	CASE NUMBER: SCV-270269
--	----------------------------

PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER

1. I am at least 18 years old and **not a party to this action**.

a. My residence or business address is (*specify*):
2255 Calle Clara, La Jolla, CA 92037

b. My electronic service address is (*specify*): Karla@Bamlawca.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
Andrew Livingston, Esq.
ORRICK
405 Howard Street, San Francisco, CA 94105

b. To (*electronic service address of person served*): ALivingston@Orrick.com

c. On (*date*): 05/16/2022

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 05/16/2022

Karla Horne

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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T: (858)551-1223; F: (858) 551-1232

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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herself and on behalf of all persons similarly
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Plaintiff,

vs.

MORGAN STANLEY SMITH BARNEY LLC
a Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. SCV-270269

**[PROPOSED] ORDER ON
PLAINTIFF'S REQUEST FOR
DISMISSAL OF CLASS ACTION,
WITHOUT PREJUDICE**

Judge: Hon. Patrick Broderick

Dept.: 17

Action Filed: February 24, 2022

[PROPOSED] ORDER

The Court, having considered Plaintiff DAWN WATTERS' ("Plaintiff") Request for Dismissal, the supporting declaration of Charlotte James, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiff's Action, including all putative class allegations, are hereby dismissed without prejudice. Each side is to bear their own respective fees and costs.

IT IS SO ORDERED.

Dated: _____

Hon. Patrick Broderick
Judge of the Superior Court
County of Sonoma